

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2009-090026

03/25/2010

HON. SHERRY K. STEPHENS

CLERK OF THE COURT

L. Wilkins

Deputy

IN RE THE MARRIAGE OF
MICHAEL A BROWN

JAMES D R REDPATH

AND

JULIE A SIMS

ANGELA K HALLIER

UNDER ADVISEMENT RULING

ORDER OF PROTECTION DISMISSED

The Court has considered the testimony and exhibits presented at the evidentiary hearings conducted on March 1, 2010 and March 23, 2010. Based upon the matters presented, the Court finds by a preponderance of the evidence that Plaintiff/Father failed to establish Defendant/Mother committed any act of domestic violence or may commit any act of domestic violence. Further, there was no evidence presented that Plaintiff/Father had a concern that Defendant/Mother was becoming physically aggressive or blocked his way into any designated areas.

The Order of Protection was issued on January 28, 2010 because the Court found "Defendant has become physically aggressive with Plaintiff by blocking his way into and out of designated areas". The testimony at the hearings in March 2010 established one incident at a McDonald's Restaurant where Defendant/Mother approached Plaintiff/Father to take the parties' child from him at a designated custody exchange. While there was testimony that Defendant/Mother was upset with Plaintiff/Father at the custody exchange, there was no evidence of any domestic violence occurring and Plaintiff/Father did not testify he believed Defendant/Mother was going to perpetrate an act of domestic violence at that exchange. At most,

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the testimony at the evidentiary hearing established Defendant/Mother was in Plaintiff/Father's personal space when she took the child from Plaintiff/Father's arms and she raised her voice during the exchange. Plaintiff/Father testified on March 1, 2010 that he did not consider Defendant/Mother to be screaming at him at the McDonald's Restaurant, he did not want confrontation and tries to avoid it all cost, and he allowed Defendant/Mother to take the child from his arms. Plaintiff/Father further testified that his real concern was assuring Defendant/Mother was unable to possess a firearm. Additionally, Plaintiff/Father sought this Order of Protection two days after learning Defendant/Mother was requesting a custody evaluation.

The Court acknowledges there was a previous act of domestic violence perpetrated by Defendant/Mother upon Plaintiff/Father in December 2008. No criminal charges were filed although Plaintiff/Father has requested the prosecutor reconsider that decision. However, based upon a review of the transcript of the issuance proceeding and the petition, that incident was not the basis for the issuance of this Order of Protection.

IT IS ORDERED quashing the Order of Protection issued at Superior Court on January 28, 2010.

LET THE RECORD REFLECT the Court signs, this date, the Hearing Order dismissing the Order of Protection.

LET THE RECORD REFLECT the *Order of Protection* is quashed electronically at 4:25 p.m. this date.

IT IS FURTHER ORDERED signing this minute entry as a formal order of this Court pursuant to Rule 81(D), Arizona Rules of Family Law Procedure.

/s/ HONORABLE SHERRY K. STEPHENS

JUDICIAL OFFICER OF THE SUPERIOR COURT

ISSUED: *Hearing Order*

FILED: *Hearing Order and Exhibit Worksheet*

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LET THE RECORD REFLECT the courtroom clerk sends a copy of the Hearing Order by U.S. Mail to both parties.

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.